

**Great Ormond Street Hospital for Children  
NHS Foundation Trust  
(A Public Benefit Corporation)  
Constitution**

## Great Ormond Street Hospital for Children NHS Foundation Trust Constitution

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## 1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006, as amended by the Health and Social Care Act 2012.

Words importing the masculine gender only shall include the feminine gender and vice versa; words importing the singular shall import the plural and vice-versa.

References to any statute or statutory provision shall be deemed to include any instrument, order, regulation or direction issues under it and shall be construed to include a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced.

Any reference to a public body shall include any statutory successor which has taken over either or both the functions or responsibilities of that body.

<b>the 2006 Act</b>	is the National Health Service Act 2006;
<b>the 2012 Act.</b>	is the Health and Social Care Act 2012;
<b>Accounting Officer</b>	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
<b>Annual Members' Meeting</b>	has the meaning given to it in paragraph 11 of the constitution;
<b>appointed governors</b>	means those governors appointed by the appointing organisations;
<b>appointing organisations</b>	means those organisations named in Annex 4 of this constitution who are entitled to appoint governors;
<b>Audit Committee</b>	means a committee of the Trust Board as established pursuant to paragraph 39 of the constitution;
<b>authorisation</b>	is the authorisation issued by Monitor under Section 35 of the 2006 Act
<b>Chair</b>	means the person appointed by the Council of Governors as the Chair of the Trust;
<b>Chief Executive</b>	means the chief executive officer of the Trust appointed in accordance with the constitution;
<b>Company Secretary</b>	means the Secretary of the Trust or any other person, appointed to perform the duties of the Trust's corporate secretary

	from time to time;
<b>constitution</b>	means this constitution and all annexes to it;
<b>Council of Governors</b>	means the Council of Governors as constituted pursuant to this constitution;
<b>Deputy Chair</b>	means the non-executive director appointed by the Council of Governors to exercise the Chair's functions if the Chair is absent for any reason;
<b>Deputy Lead Governor</b>	means the governor elected by the Council of Governors as Deputy Lead Governor in accordance with paragraph 3 of Annex 6;
<b>director</b>	means a member of the Trust Board;
<b>director of finance</b>	means the chief financial officer of the Trust;
<b>elected governors</b>	means those governors elected by classes of the public and patient and carer constituency and the staff constituency;
<b>executive director</b>	means a member of the Trust Board who is an officer of the Trust;
<b>financial year</b>	means: <ul style="list-style-type: none"> <li>(a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and</li> <li>(b) each successive period of twelve months beginning with 1 April;</li> </ul>
<b>governor</b>	means a person elected or appointed to the Council of Governors in accordance with the terms of this constitution (such person being, for the avoidance of doubt, a governor for the purposes of the 2006 and 2012 Act);
<b>Health Service Body</b>	means an NHS Foundation Trust, an NHS Trust, a Special Health Authority, NHS England, NHS Improvement and the Care Quality Commission or any successor bodies;
<b>Lead Governor</b>	means the governor elected by the Council of Governors as Lead Governor

	in accordance with paragraph 3 of Annex 6;
<b>member</b>	means those persons who are registered, on application, as members of one of the constituencies detailed below in accordance with the provisions of this constitution;
<b>Monitor or the regulator</b>	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
<b>non-executive director</b>	means a member of the Trust Board appointed as a non-executive director in accordance with the constitution;
<b>officer</b>	means employee of the Trust or any other person holding a paid position with the Trust;
<b>patient and carer governor</b>	means a governor elected by the members of the classes of the patient and carer constituency;
<b>PSAA</b>	means Public Sector Audit Appointments Limited;
<b>public governor</b>	means a governor elected by the members of one of the areas of the public constituency;
<b>Senior Independent Director</b>	means the non-executive director appointed by the Trust Board in consultation with the Council of Governors;
<b>staff governor</b>	means a governor elected by the members of the staff constituency;
<b>Trust</b>	means Great Ormond Street Hospital for Children NHS Foundation Trust;
<b>Trust Board</b>	means the board of directors of the Trust as constituted in accordance with the constitution and referred to in paragraph 22 of this constitution;
<b>voluntary organisation</b>	means a body, other than a public or local authority, the activities of which are not carried on for profit.

## 2. **Name**

The name of the foundation trust is Great Ormond Street Hospital for Children NHS Foundation Trust.

## 3. **Principal purpose**

3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purposes related to:

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## 4. **Powers**

4.1 The powers of the Trust are set out in the 2006 Act.

4.2 All the powers of the Trust shall be exercised by the Trust Board on behalf of the Trust.

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

## 5. **Membership and constituencies**

The Trust shall have members, each of whom shall be a member of one of the following constituencies:

5.1 a public constituency;

5.2 a staff constituency; and

5.3 a patient and carer constituency.

## 6. **Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust.

## 7. **Public Constituency**

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of paragraphs 8.1.1 and 8.1.2 are referred to collectively as the Staff Constituency.
- 8.3 The minimum number of members in the Staff Constituency is specified in Annex 2.
- 8.4 An individual who is:
  - 8.4.1 eligible to become a member of the Staff Constituency; and
  - 8.4.2 invited by the Trust to become a member of the Staff Constituency,shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **9. Patient and Carer Constituency**

- 9.1 An individual who has, within the period specified below, attended any of the Trust's hospitals as either a patient or as the carer of a patient may become a member of the Trust.
- 9.2 The period referred to in paragraph 9.1 shall be the period of 10 years immediately preceding the date of an application by the patient or carer to become a member of the Trust.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of paragraph 9.1 are referred to collectively as the Patient and Carer Constituency.
- 9.4 The Patient and Carer Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Patient and Carer Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patient and Carer Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary

organisation, does not come within the category of those who qualify for membership of the Patient and Carer Constituency.

9.6 The minimum number of members in each class of the Patient and Carer Constituency is specified in Annex 3.

9.7 Where an individual is eligible to become a member of the Public Constituency or the Patient and Carers' Constituency that individual shall in the first instance become a member of the Patients and Carers' Constituency unless they have informed the trust in writing that they wish instead to become a member of the Public Constituency.

#### **10. Restriction on membership**

10.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

10.3 An individual must be at least 10 years old to become a member of the Trust.

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 10 – Further Provisions.

#### **11. Members' Meetings**

1.1 The Trust shall hold an Annual Members' Meeting.

1.2 The Annual Members' Meeting must be held within nine months of the end of each financial year.

11.1 The Annual Members' Meeting shall be open to members of the public.

11.2 Further provisions about members' meetings are set out in Annex 10 – Further Provisions – Members.

#### **12. Council of Governors – composition**

12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

12.2 The composition of the Council of Governors is specified in Annex 4.

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

#### **13. Council of Governors – election of governors**

13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

- 13.2 The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The Model Election Rules current at [x], and as amended by the Trust, are attached at Annex 5. A variation of the Model Election Rules shall not constitute a variation of the terms of this constitution.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

**14. Council of Governors- tenure**

- 14.1 An elected governor may hold office for a period of up to 3 years.
- 14.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 14.3 An elected governor shall be eligible for re-election at the end of their term.
- 14.4 An appointed governor may hold office for a period of up to 3 years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of their term.
- 14.7 The maximum aggregate term of office for any elected governor or appointed governor is six years.

**15. Council of Governors– disqualification and removal**

- 15.1 The following may not become or continue as a member of the Council of Governors:
  - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 15.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 15.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
  - 15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 15.2 Governors must be at least 16 years of age at the date that their term of office commences.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

**16. Council of Governors – duties of governors**

16.1 The general duties of the Council of Governors are –

16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Trust Board, and

16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

16.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

**17. Council of Governors – meetings of governors**

17.1 The Chair of the Trust (i.e. the Chair of the Trust Board, appointed in accordance with the provisions of paragraph 25.1 below) or, in their absence the Deputy Chair (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors.

17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

17.3 Further provisions as to the exclusion of members of the public are set out in Annex 8.

17.4 The provisions of this paragraph shall be without prejudice to the power of the Council of Governors, as exercised by the Chair or other governors, to exclude, suppress or prevent disorderly conduct or other misbehaviour at a meeting.

17.5 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

**18. Council of Governors – Standing Orders**

The Standing Orders for the practice and procedure of the Council of Governors, as the same may be varied from time to time subject to applicable law and guidance are attached at Annex 8.

**19. Council of Governors - conflicts of interest of governors**

Each governor shall comply with the provisions as to the disclosure of interests by governors set out at Annex 8.

**20. Council of Governors – expenses**

The Trust may pay travelling and other reasonable expenses to members of the Council of Governors at rates determined by the Trust.

**21. Council of Governors – further provisions**

Further provisions with respect to the Council of Governors are set out in Annex 6.

**22. Trust Board – composition**

- 22.1 The Trust is to have a Trust Board, which shall comprise both executive and non-executive directors.
- 22.2 The Trust Board is to comprise:
- 22.2.1 a non-executive Chair
  - 22.2.2 6 other non-executive directors; and
  - 22.2.3 6 executive directors.
- 22.3 One of the executive directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the executive directors shall be the finance director.
- 22.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the executive directors is to be a registered nurse or a registered midwife.

**23. Trust Board – general duty**

The general duty of the Trust Board and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

**24. Trust Board – qualification for appointment as a non-executive director**

- 24.1 A person may be appointed as a non-executive director only if –
- 24.1.1 they are a member of the Public Constituency; or
  - 24.1.2 they are a member of the Patient and Carer Constituency; or
  - 24.1.3 where any of the Trust’s hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and
  - 24.1.4 they are not disqualified by virtue of paragraph 29 below or Annex 7.

**25. Trust Board – appointment and removal of Chair and other non-executive directors**

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors.
- 25.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 25.3 Further provisions as to the process for the appointment and removal of the Chair or other non-executive directors are set out in Annex 7.

**26. Trust Board – appointment of Deputy Chair**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chair.
- 26.2 If the Chair is unable to discharge their office for any reason the Deputy Chair shall be acting Chair of the Trust.
- 26.3 Any director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with the constitution.

**27. Senior Independent Director**

- 27.1 The Trust Board shall appoint one of the independent non-executive directors to be the “Senior Independent Director” (as defined in the NHS Foundation Trust Code of Governance) in consultation with the Council of Governors, for such a period not exceeding the remainder of their term as a non-executive director, as they may specify on appointing them.
- 27.2 The Senior Independent Director will be available to governors if they have concerns that the Chair is unable to resolve.

**28. Trust Board - appointment and removal of the Chief Executive and other executive directors**

- 28.1 The non-executive directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**29. Trust Board – disqualification**

- 29.1 The following may not become or continue as a member of the Trust Board:
  - 29.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 29.1.2 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);
  - 29.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
  - 29.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 29.2 Further provisions as to the circumstances in which a person may not become or continue as a member of the Trust Board are set out in Annex 7.

**30. Trust Board – meetings**

- 30.1 Meetings of the Trust Board shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2 Before holding a meeting, the Trust Board must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Trust Board must send a copy of the minutes of the meeting to the Council of Governors.

**31. Trust Board – Standing Orders**

The Standing Orders for the practice and procedure of the Trust Board are set out in Annex 9.

**32. Trust Board - conflicts of interest of directors**

- 32.1 The duties that a director of the Trust has by virtue of being a director include in particular –
  - 32.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - 32.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in sub-paragraph 32.1.1 is not infringed if –
  - 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 32.2.2 the matter has been authorised in accordance with the constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, “third party” means a person other than –
  - 32.4.1 the Trust; or
  - 32.4.2 a person acting on its behalf.
- 32.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 Paragraph 32.5 does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

- 32.9 A director need not declare an interest –
- 32.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 32.9.2 if, or to the extent that, the directors are already aware of it;
  - 32.9.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
    - 32.9.3.1 by a meeting of the Trust Board, or
    - 32.9.3.2 by a committee of the directors appointed for the purpose under the constitution.
- 32.10 A matter shall be authorised for the purposes of paragraph 32.2.2 if it has previously been approved by the Trust Board at a meeting and the minutes of the meeting shall be conclusive evidence of such approval having been given.
- 32.11 Further provisions as to the disclosure of interests by directors are set out in Annex 9.

**33. Trust Board – remuneration and terms of office**

- 33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 33.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

**34. Registers**

The Trust shall have:

- 34.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 34.2 a register of members of the Council of Governors;
- 34.3 a register of interests of governors;
- 34.4 a register of directors; and
- 34.5 a register of interests of the directors.

**35. Admission to and removal from the registers**

- 35.1 The Company Secretary shall add to the register of members the name of any individual who is accepted as a member of the Trust under the provisions of this constitution as soon as is reasonably practicable and in any event within fourteen (14) days of the Company Secretary being notified of the requirements for such amendment.
- 35.2 The Company Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution as soon as is reasonably practicable and in any

event within fourteen (14) days of the Company Secretary being notified of the requirement for such amendment.

**36. Registers – inspection and copies**

- 36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
  - 36.2.1 any member of the Patient and Carers' Constituency; or
  - 36.2.2 any other member of the Trust, if they so requests.
- 36.3 So far as the registers are required to be made available:
  - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

**37. Documents available for public inspection**

- 37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 37.1.1 a copy of the current constitution;
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 37.1.3 a copy of the latest annual report;
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
  - 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

- 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
  - 37.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 37.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **38. Auditor**

- 38.1 The Trust shall have an auditor.
- 38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 38.3 A person may only be appointed as the auditor if they (or, in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 38.4 An officer of PSAA may be appointed as auditor with the agreement of the PSAA. Where an officer of PSAA is appointed as auditor, PSAA may charge the Trust such fees for their services as will cover the full cost of providing them.
- 38.5 The auditor is to carry out his or their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the regulator as to standards, procedures and techniques to be adopted.

### **39. Audit committee**

The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

#### 40. **Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 40.6 The following documents will be made available to the Comptroller and Auditor General for examination at their request:
  - 40.6.1 the accounts;
  - 40.6.2 any records relating to them; and
  - 40.6.3 any report of the auditor on them.
- 40.7 In preparing its annual accounts, the Accounting Officer shall cause the Trust to comply with any directions given by the regulator with the approval of the Secretary of State as to:
  - 40.7.1 the methods and principles according to which the accounts are to be prepared;
  - 40.7.2 the content and form of the accounts,and shall be responsible for the functions of the Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
- 40.8 The Accounting Officer shall cause the Trust to:
  - 40.8.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 40.8.2 once it has done so, send copies of those documents to the regulator within such a period as the regulator may direct.

#### 41. **Annual report, forward plans and non-NHS work**

- 41.1 The Trust shall prepare an annual report and send it to Monitor.
- 41.2 The annual reports are to give:
  - 41.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the public constituency and of the classes of the staff constituency is representative of those eligible for such membership; and
  - 41.2.2 any other information which the regulator requires.
- 41.3 The Trust is to comply with any decision which the regulator makes as to:

- 41.3.1 the form of the reports;
  - 41.3.2 when the reports are to be sent to it; and
  - 41.3.3 the periods to which the reports are to relate.
- 41.4 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 41.5 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.6 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.7 Each forward plan must include information about –
- 41.7.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
  - 41.7.2 the income it expects to receive from doing so.
- 41.8 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.7.1 the Council of Governors must –
- 41.8.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 41.8.2 notify the directors of the Trust of its determination.
- 41.9 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

**42. Presentation of the annual accounts and reports to the Council of Governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts;
  - 42.1.2 any report of the auditor on them; and
  - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Trust Board in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

**43. Instruments**

43.1 The Trust shall have a seal.

43.2 The seal shall not be affixed except under the authority of the Trust Board.

**44. Review of the constitution**

44.1 The constitution shall be reviewed at least every three years by the Trust.

44.2 A review of the constitution shall include consideration of any matters arising under paragraph 48 below.

**45. Amendment of the constitution**

45.1 The Trust may make amendments of its constitution only if –

45.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

45.1.2 More than half of the members of the Trust Board of the Trust voting approve the amendments.

45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

45.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

45.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

45.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

45.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

45.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

**46. Officers' indemnity and insurance**

46.1 Members of the Trust Board and Council of Governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

46.2 The Trust may purchase and maintain for members of the Trust Board and Council of Governors insurance in respect of liability.

#### 47. **Mergers etc. and significant transactions**

- 47.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 47.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 47.3 In paragraph 47.2, the following words have the following meanings:
- 47.3.1 “Significant transaction” means a transaction which meets any one of the tests below:
- 47.3.1.1 the total asset test; or
- 47.3.1.2 the total income test; or
- 47.3.1.3 the capital test (relating to acquisitions or divestments).
- 47.3.2 The total asset test is met if the assets which are the subject of the transaction exceed 25% of the total assets of the Trust;
- 47.3.3 The total income test is met if, following the completion of the relevant transaction, the total income of the Trust will increase or decrease by more than 25%;
- 47.3.4 The capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s total taxpayers’ equity).
- 47.3.5 For the purposes of calculating the tests in this paragraph 47.3 figures used for the Trust assets, total income and taxpayers’ equity must be the figures shown in the latest published audited consolidated accounts.
- 47.4 A transaction:
- 47.4.1 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;
- 47.4.2 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;
- 47.4.3 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

**48. Procedure to address a matter on which the constitution is silent**

- 48.1 This procedure applies to any matter arising in relation to the governance of the Trust but in respect of which this constitution is silent.
- 48.2 At the earliest opportunity the Chair shall be made aware of the matter(s) concerned.
- 48.3 The Chair shall normally inform the Chief Executive of the matter(s) and must inform them where the matters fall solely within the responsibilities of the Accounting Officer.
- 48.4 The Chair shall take initial advice as appropriate from the Chief Executive and the Company Secretary.
- 48.5 The Chair shall normally inform the Trust Board about the matters and the initial steps that they propose to take to address them.
- 48.6 Where the matters concern the Council of Governors, the Chair shall:
  - 48.6.1 inform, and receive advice from, the Lead Governor; and
  - 48.6.2 normally inform the Council of Governors about the matters and the initial steps that they propose to take to address them.
- 48.7 The Chair shall have authority to determine, after taking appropriate advice, the action that is necessary to address the matters raised and the timetable over which such action will be taken.
- 48.8 The Chair shall liaise as necessary with the Chief Executive, the Company Secretary and the Lead Governor as matters proceed, and shall keep the Trust Board and the Council of Governors informed as appropriate.
- 48.9 Where the matters raised fall solely within the responsibilities of the Accounting Officer they must take lead responsibility for the matters (and any action that they put into place for doing so supersedes this procedure).
- 48.10 Where the matters raised concern the Chair, the Deputy Chair shall have authority to implement this procedure (and shall fulfil the other responsibilities of the Deputy Chair as set out in the Constitution).
- 48.11 In taking any action under this paragraph 48 the Chair, or Deputy Chair, as the case may be, shall act proportionately.

**ANNEX 1**  
**The Public Constituency**

(Paragraphs 7.1 and 7.3)

The public constituency shall be divided into the following classes:

Name	Areas	Governors	Minimum Number of members
North London and surrounding area	<p>Comprising the following electoral areas in North London: Barking &amp; Dagenham; Barnet; Brent; Camden; City of London; Hackney; Ealing; Enfield; Hammersmith &amp; Fulham; Haringey; Harrow; Havering; Hillingdon; Hounslow; Islington; Kensington &amp; Chelsea; Newham; Redbridge; Tower Hamlets; Waltham Forest; Westminster.</p> <p>Comprising the following electoral areas in</p> <p><u>Bedfordshire</u>: Bedford; Central Bedfordshire; Luton;</p> <p><u>Hertfordshire</u>: Broxbourne; Dacorum; East Hertfordshire; Hertfordshire; Hertsmere; North Hertfordshire; St Albans; Stevenage; Three Rivers; Watford; Welwyn Hatfield;</p> <p><u>Buckinghamshire</u>: Aylesbury Vale; Buckinghamshire; Chiltern; Milton Keynes; South Bucks; Wycombe;</p> <p><u>Essex</u>: Basildon; Braintree; Brentwood; Castle Point; Chelmsford; Colchester; Epping Forest; Essex; Harlow; Maldon; Rochford; Southend on Sea; Tendring; Thurrock; Uttlesford.</p>	4	300
South London and surrounding area	<p>Comprising the following electoral areas in South London: Bexley; Bromley; Croydon; Greenwich; Royal Borough of Kingston upon Thames; Lambeth; Lewisham; Merton; Richmond upon Thames; Southwark; Sutton; Wandsworth.</p> <p>Comprising the following electoral areas in:</p> <p><u>Surrey</u>: Elmbridge; Epsom and Ewell; Guildford; Mole Valley; Reigate and Banstead; Runnymede; Spelthorne;</p>	1	300

Name	Areas	Governors	Minimum Number of members
	<p>Surrey Heath; Tandridge; Waverley; Woking;</p> <p><u>Kent</u>: Ashford; Canterbury; Dartford; Dover; Gravesham; Maidstone; Medway; Sevenoaks; Shepway; Swale; Thanet; Tonbridge and Malling; Tunbridge Wells;</p> <p><u>Sussex</u>: Brighton and Hove; East Sussex; Eastbourne; Hastings; Lewes; Rother; Wealden; Adur; Arun; Chichester; Crawley; Horsham; Mid Sussex; West Sussex; Worthing.</p>		
Rest of England and Wales	All electoral areas in England and Wales not falling within one of the areas referred to above.	2	300
<b>Total</b>		<b>7</b>	<b>900</b>

**ANNEX 2**  
**The Staff Constituency**

The staff constituency will comprise one class.

The minimum number of members in this constituency shall be 2000.

**ANNEX 3**  
**The Patient and Carer Constituency**

The patient and carer constituency shall be divided into the following classes:

<b>Name of class within the constituency</b>	<b>Minimum number of members</b>
Patients from London	150
Patients from outside London	150
Parents and Carers from London	300
Parents and Carers from outside London	300
<b>Total</b>	<b>900</b>

A "Parent" is defined as any person with a child who has been a patient at the Trust (as defined above) and who has attended the Trust with the patient within the 10 years immediately preceding the date of application of the parent to become a member of the Trust.

A "Carer" must be the parent or person acting in loco parentis for an inpatient or outpatient **of any age** and have attended the Trust with the patient within the 10 years immediately preceding the date of application of the carer to become a member of the Trust.

**ANNEX 4**  
**Composition of Council of Governors**

<b>Constituency</b>	<b>Number of seats on the Council of Governors</b>
<b>Elected governors</b>	
<b><i>Patient and carer constituency</i></b>	
Patients from London	2
Patients from outside London	2
Parents and carers from London	3
Parents and Carers from outside London	3
<b><i>Public constituency</i></b>	
North London and Surrounding Area	4
South London and Surrounding Area	1
The rest of England and Wales	2
<b><i>Staff constituency</i></b>	5
<b><i>Appointed governors</i></b>	
University College London, Institute of Child Health	1
London Borough of Camden	1
Young People's Forum	2
<b>Total</b>	<b>26</b>

**ANNEX 5**  
**The Model Election Rules (2014)**

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3. Computation of time

**PART 3: RETURNING OFFICER**

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**PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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12. Declaration of eligibility
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19. Poll to be taken by ballot
20. The ballot paper
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*Action to be taken before the poll*

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*The poll*

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34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

*Procedure for receipt of envelopes, internet votes, telephone vote and text message votes*

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37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
40. Sealing of packets

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42. Arrangements for counting of the votes
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44. Rejected ballot papers and rejected text voting records
45. First stage
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**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

- 59. Countermand or abandonment of poll on death of candidate

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Expenses*

- 60. Election expenses
- 61. Expenses and payments by candidates
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### *Publicity*

- 63. Publicity about election by the corporation
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## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

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## **PART 12: MISCELLANEOUS**

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

## PART 1: INTERPRETATION

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### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;

“*Council of Governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1; “internet voting record” has the meaning set out in rule 26.4(d);

“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“*lead governor*” means the governor nominated by the Council of Governors to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

“*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;

“*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 64.2(b)

“*polling website*” has the meaning set out in rule 26.1;

“*postal voting information*” has the meaning set out in rule 24.1;

“*telephone short code*” means a short telephone number used for the purposes of submitting a vote by text message;

“*telephone voting facility*” has the meaning set out in rule 26.2;

“*telephone voting record*” has the meaning set out in rule 26.5 (d);

“*text message voting facility*” has the meaning set out in rule 26.3;

*“text voting record”* has the meaning set out in rule 26.6 (d);

*“the telephone voting system”* means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

*“the text message voting system”* means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

*“voter ID number”* means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

*“voting information”* means postal voting information and/or e-voting information

- 1.2 Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

2.1 The proceedings at an election shall be conducted in accordance with the following timetable:

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

### 3. Computation of time

3.1 In computing any period of time for the purposes of the timetable:

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

3.2 In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

## **PART 3: RETURNING OFFICER**

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### **4. Returning Officer**

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

### **5. Staff**

- 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

### **6. Expenditure**

- 6.1 The corporation is to pay the returning officer:
  - (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
  - (b) such remuneration and other expenses as the corporation may determine.

### **7. Duty of co-operation**

- 7.1 The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

## **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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### **8. Notice of election**

8.1 The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

### **9. Nomination of candidates**

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

### **10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

- (c) constituency, or class within a constituency, of which the candidate is a member.

**11. Declaration of interests**

- 11.1 The nomination form must state any financial interest that the candidate has in the corporation. If the candidate has no such interests, the paper must include a statement to that effect.

**12. Declaration of eligibility**

- 12.1 The nomination form must include a declaration made by the candidate:
- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
  - (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

**13. Signature of candidate**

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
  - (b) their declaration of interests as required under rule 11, is true and correct, and
  - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

**14. Decisions as to the validity of nomination**

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination form is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the form is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

- (b) that the form does not contain the candidate's particulars, as required by rule 10;
  - (c) that the form does not contain a declaration of the interests of the candidate, as required by rule 11,
  - (d) that the form does not include a declaration of eligibility as required by rule 12, or
  - (e) that the form is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

**15. Publication of statement of candidates**

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
  - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination forms**

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

**17. Withdrawal of candidates**

17.1 A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

**18. Method of election**

18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then:

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

## **PART 5: CONTESTED ELECTIONS**

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### **19. Poll to be taken by ballot**

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
  - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
  - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

### **20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

**21. The declaration of identity (public and patient constituencies)**

- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she has not marked or returned any other voting information in the election, and
  - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

## **22. List of eligible voters**

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

- 22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

## **23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

**24. Issue of voting information by returning officer**

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- ("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
  - (d) contact details of the returning officer,
- ("e-voting information").

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

**25. Ballot paper envelope and covering envelope**

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

**26. E-voting systems**

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,

- (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

- (iv) instructions on how to vote and how to make a declaration of identity,
    - (v) the date and time of the close of the poll, and
    - (vi) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (f) prevent any voter from voting after the close of poll.
- 26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- (a) require a voter to:
    - (i) provide his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;
  - (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote
  - (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (e) prevent any voter from voting after the close of poll.

## *The poll*

### **27. Eligibility to vote**

- 27.1 An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

### **28. Voting by persons who require assistance**

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

### **29. Spoilt ballot papers and spoilt text message votes**

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter’s identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

**30. Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.

**31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

**32. ID declaration form for replacement ballot papers (public and patient constituencies)**

- 32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity as outlined in paragraph 21.

*Polling by internet, telephone or text*

**33. Procedure for remote voting by internet**

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

**34. Voting procedure for remote voting by telephone**

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

**35. Voting procedure for remote voting by text message**

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

*Procedure for receipt of envelopes, internet votes, telephone votes and text message votes*

**36. Receipt of voting documents**

- 36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.

- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) put the ID declaration form if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been

received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

**38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (c) place the ID declaration form in a separate packet.

**39. De-duplication of votes**

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;

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<sup>1</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

#### 40. **Sealing of packets**

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

## PART 6: COUNTING THE VOTES

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### 41. Interpretation of Part 6

41.1 In Part 6 of these rules:

“*ballot document*” means a ballot paper, internet voting record, telephone voting record or text voting record.

“*continuing candidate*” means any candidate not deemed to be elected, and not excluded,

“*count*” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“*deemed to be elected*” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“*mark*” means a figure, an identifiable written word, or a mark such as “X”,

“*non-transferable vote*” means a ballot document:

(c) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule 49,

“*preference*” as used in the following contexts has the meaning assigned below:

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

© in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“*quota*” means the number calculated in accordance with rule 46,

“*surplus*” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“*stage of the count*” means:

(a) the determination of the first preference vote of each candidate,

- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“*transferable vote*” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“*transferred vote*” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

“*transfer value*” means the value of a transferred vote calculated in accordance with rules 47.4 or 47.7.

#### 42. **Arrangements for counting of the votes**

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
  - (a) the Trust Board and the Council of Governors of the corporation have approved:
    - (i) the use of such software for the purpose of counting votes in the relevant election, and
    - (ii) a policy governing the use of such software, and
  - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

#### 43. **The count**

- 43.1 The returning officer is to:
  - (a) count and record the number of:
    - (i) ballot papers that have been returned; and
    - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

**44. Rejected ballot papers and rejected text voting records**

44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

**45. First stage**

45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

**46. The quota**

- 46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- 46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- 46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

**47. Transfer of votes**

- 47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
  - (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:
  - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- 47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
  - (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.

- 47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7 The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- 47.8 Each transfer of a surplus constitutes a stage in the count.
- 47.9 Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- 47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
  - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- 47.11 This rule does not apply at an election where there is only one vacancy.

**48. Supplementary provisions on transfer**

- 48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
  - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- 48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:
- (a) record the total value of the votes transferred to each candidate,
  - (b) add that value to the previous total of votes recorded for each candidate and record the new total,

- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
  - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

48.3 All ballot documents transferred under rule 47 or 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**49. Exclusion of candidates**

49.1 If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).

49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

49.3 The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

- 49.5 If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub-parcels according to their transfer value.
- 49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- 49.7 The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule 49.1.
- 49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- 49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.
- 49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- 49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**50. Filling of last vacancies**

- 50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- 50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- 50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**51. Order of election of candidates**

- 51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 47.10.
- 51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- 51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- 51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

## **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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### **52. Declaration of result for contested elections**

52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on Great Ormond Street Hospital for Children NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Foundation Trust, or
  - (ii) in any other case, to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 44.1,
- (f) the number of rejected text voting records under each of the headings in rule 44.3,

available on request.

### **53. Declaration of result for uncontested elections**

53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

## **PART 8: DISPOSAL OF DOCUMENTS**

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### **54. Sealing up of documents relating to the poll**

54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

54.2 The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

54.3 The returning officer must endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

### **55. Delivery of documents**

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

### **56. Forwarding of documents received after close of the poll**

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the Chair of the corporation.

**57. Retention and public inspection of documents**

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Trust Board of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

**58. Application for inspection of certain documents relating to an election**

- 58.1 The corporation may not allow:
  - (a) the inspection of, or the opening of any sealed packet containing:
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters, or
  - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the Trust Board of the corporation.

- 58.2 A person may apply to the Trust Board of the corporation to inspect any of the documents listed in rule 58.1, and the Trust Board of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

58.3 The Trust Board of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to:

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

58.4 On an application to inspect any of the documents listed in rule 58.1 the Trust Board of the corporation must:

- (a) in giving its consent, and
- (b) in making the documents available for inspection

ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that Monitor has declared that the vote was invalid.

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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### **59. Countermand or abandonment of poll on death of candidate**

- 59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and
  - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that:
    - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
    - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- 59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

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### *Election expenses*

#### **60. Election expenses**

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to Monitor under Part 11 of these rules.

#### **61. Expenses and payments by candidates**

61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

#### **62. Election expenses incurred by other persons**

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

### *Publicity*

#### **63. Publicity about election by the corporation**

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

**64. Information about candidates for inclusion with voting information**

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”).

**65. Meaning of “for the purposes of an election”**

65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

## **PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

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### **66. Application to question an election**

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel ( IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **PART 12: MISCELLANEOUS**

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### **67. Secrecy**

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

67.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

67.3 The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

### **68. Prohibition of disclosure of vote**

68.1 No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

### **69. Disqualification**

69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

### **70. Delay in postal service through industrial action or unforeseen event**

70.1 If industrial action, or some other unforeseen event, results in a delay in:

- (a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

**ANNEX 6**  
**Additional Provisions – Council of Governors**

(Paragraphs 15.3 and 21)

**1. Elected governors**

- 1.1 A member of the public constituency may not vote at an election for a public governor unless at the time of voting they have made and returned a declaration in the form specified in Annex 5, paragraph 21, that they are qualified to vote as a member of the relevant area of the public constituency.
- 1.2 A member of the patient and carer constituency may not vote at an election for a patient and carer governor unless at the time of voting they have made and returned a declaration in the form specified in Annex 5, paragraph 21, that they are qualified to vote as a member of the relevant area of the patient and carer constituency.

**2. Appointed governors**

- 2.1 The Company Secretary, having consulted the Chair and the London Borough of Camden, is to adopt a process for agreeing with that local authority the appointment of the governor appointed by it.
- 2.2 The Company Secretary, having consulted the Chair and the University of London, Institute of Child Health, is to adopt a process for agreeing with that university the appointment of the governor appointed by it.
- 2.3 The Young Peoples' Forum governors are to be appointed by the Young Peoples' Forum, in accordance with a process agreed with the Chair and the Company Secretary.

**3. Lead Governor and Deputy Lead Governor**

- 3.1 The Council of Governors shall elect one of the elected governors as the Lead Governor in accordance with the conditions of appointment set out in the Lead Governor role description approved by the Council of Governors.
- 3.2 The Lead Governor shall have the responsibilities, and perform the tasks, set out in the Lead Governor role description.
- 3.3 The Council of Governors shall elect one of the elected governors as the Deputy Lead Governor in accordance with the conditions of appointment set out in the Deputy Lead Governor role description approved by the Council of Governors.
- 3.4 The Deputy Lead Governor shall have the responsibilities, and perform the tasks, set out in the Deputy Lead Governor role description.

**4. Further provisions as to eligibility to be a governor**

- 4.1 In addition to paragraph 15 of the constitution, a person may not become or continue as a governor if:
  - 4.1.1 they are not a member of the Trust;

- 4.1.2 in the case of a public governor, or patient and carer governor, or staff governor they cease to be a member of the constituency or class of constituency from which they were elected;
- 4.1.3 in the case of an appointed governor, if the organisation which appointed them terminates that appointment;
- 4.1.4 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sex Offenders Act or other relevant legislation or their name appears on the Protection of Children Act List;
- 4.1.5 they are the spouse, partner, parent, child of, or occupant of the same household as, a member of the Trust Board or the Council of Governors of the Trust;
- 4.1.6 they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
- 4.1.7 they are an executive or non-executive director of the Trust;
- 4.1.8 they are a governor, non-executive director (including the chair) or, executive director (including the chief executive officer) of another Health Service Body, unless they are appointed by an appointing organisation which is a Health Service Body or the Chair agrees to them becoming, or continuing as, a governor of the Trust;
- 4.1.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 4.1.10 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.11 they have previously been removed as a governor pursuant to paragraph 5 of this Annex;
- 4.1.12 they have previously been removed by as a governor from another NHS foundation trust by resolution of the Council of Governors of that NHS foundation trust;
- 4.1.13 they have failed to sign and deliver to the Company Secretary a statement in the form required by the Company Secretary confirming acceptance of the code of conduct for governors;
- 4.1.14 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor;
- 4.1.15 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 4.1.16 they have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and

- they have not subsequently had their name included in such a list; or
    - 4.1.17 they have failed to repay (without good cause) any amount of monies properly owed to the Trust.
  - 4.2 All non-staff candidates for election to the Council of Governors and prospective appointees to the Council of Governors will undergo Disclosure and Barring Service checks. The Chair will after taking appropriate advice determine instances in which criminal records will preclude election or appointment to the Council of Governors.
  - 4.3 A person holding office as a governor shall immediately cease to do so if:
    - 4.3.1 they resign by notice in writing to the Company Secretary;
    - 4.3.2 they become disqualified from office under paragraph 15 of the constitution or under paragraph 4.1 of this Annex;
    - 4.3.3 they fail to attend two meetings of the Council of Governors in a period of one year unless the Chair, Lead Governor and Company Secretary are satisfied that:
      - 4.3.3.1 the absence was due to a reasonable cause; and
      - 4.3.3.2 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
    - 4.3.4 they have refused to undertake any training which the Council of Governors requires all governors to undertake unless the Chair, Lead Governor and Company Secretary are satisfied that the refusal was due to a reasonable cause; or
    - 4.3.5 they are removed from the Council of Governors by a resolution passed under paragraph 5 below.
  - 4.4 For the purposes of 4.3.3.1 and 4.3.4:
    - 4.4.1 an absence will ordinarily be considered to be due to a reasonable cause if it is due to:
      - 4.4.1.1 a conflict with work or personal commitments in circumstances where the Trust has changed the date of the meeting of the Council of Governors [or the required training] at short notice;
      - 4.4.1.2 ill health; or
      - 4.4.1.3 a personal or family emergency.
    - 4.4.2 For the avoidance of doubt, work commitments will not be considered a reasonable cause unless the Trust has changed the date of the meeting of the Council of Governors or the required training at short notice.

- 4.5 Where a governor becomes disqualified for appointment under this paragraph 4 or paragraph 15 of the constitution, they shall notify the Company Secretary or the Chair in writing of such disqualification.
- 4.6 If it comes to the notice of the Company Secretary or the Chair that at the time of their appointment or later the governor is so disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

## **5. Removal of governor from office**

- 5.1 A governor may be removed from the Council of Governors by a resolution approved at a meeting of the Council of Governors by not less than three-quarters of the governors present and voting on the grounds that:
- 5.1.1 they have committed a serious breach of the code of conduct; or
  - 5.1.2 they have acted in a manner detrimental to the interests of the Trust; or
  - 5.1.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a governor, for example because:
    - 5.1.3.1 the individual's continuation as a governor would likely prejudice the ability of the Trust to fulfil its principle purpose or discharge its duties and functions;
    - 5.1.3.2 the individual's continuation as a governor would likely prejudice the Trust's work with other persons or body within whom it is engaged or may be engaged in the provision of goods and services;
    - 5.1.3.3 the individual's continuation as a governor would be likely to adversely affect public confidence in the goods and services provided by the Trust;
    - 5.1.3.4 the individual's continuation as a governor would otherwise bring the Trust into disrepute;
    - 5.1.3.5 it would not be in the best interests of the Council of Governors for the individual to continue as a governor / the individual has caused or is likely to cause prejudice to the proper conduct of the Council of Governors affairs; or
    - 5.1.3.6 the individual has failed to comply with the values and principles of the National Health Service, the Trust or the Constitution.
- 5.2 A resolution under paragraph 5.1 of this Annex may only be proposed where a statement of case under paragraph 6.8 has been upheld.
- 5.3 Where a resolution under paragraph 5.1 of this Annex is proposed and the governor concerned does not believe that the proposal is justified, the Chair shall offer the governor in question the opportunity to have the reasonableness of their proposed removal reviewed by an independent assessor. The Chair and the governor shall seek to agree on a mutually

acceptable independent assessor. If no agreement can be reached within 14 days of the governor requesting an independent review, then the Chair, following consultation with the Company Secretary and Senior Independent Director, shall decide on the assessor.

- 5.4 If any resolution proposing to remove a governor under paragraph 5.1 of this Annex is not passed at a meeting of the Council of Governors, no further resolution can be put forward to remove that governor based upon the same reasons within 12 months of the meeting at which the resolution was first put forward.

## **6. Process for investigating and resolving complaints against a governor**

- 6.1 A complaint concerning the conduct of a governor shall be made in confidence, in writing to the Chair.

- 6.2 Where a complaint is made under paragraph 6.1 above:

6.2.1 The Chair, shall, if in their opinion it is appropriate do so, take fair and reasonable steps to resolve the matter informally within 10 working days from receipt of the written complaint.

6.2.2 The Chair, may choose to delegate their responsibility under paragraph 6.2.1 above to another person.

- 6.3 Only if the complaint cannot be resolved by informal resolution under paragraph 6.2 above, or the Chair decides that informal resolution is not appropriate, the Chair may take such action as they consider is appropriate and proportionate in the circumstances, including, but not limited to:

6.3.1 the suspension of the governor against whom the complaint has been made from the Council of Governors so that the matter can be investigated. Any suspension of a governor shall be confirmed to them in writing;

6.3.2 commissioning an investigation into the complaint, to be conducted by individuals with relevant experience from either within or outside of the Trust; and/or

6.3.3 requiring the parties concerned to seek to resolve their dispute through formal mediation.

- 6.4 Any decision taken by the Chair under paragraph 6.3 above, including setting the terms of reference in respect of any investigation, must be taken following consultation with the Lead Governor and Company Secretary. If in the circumstances it is not reasonably practicable for the Chair to consult with the Lead Governor and/or Company Secretary the Chair must consult with their deputies or, if it is not reasonably practicable to consult with their deputies, such other appropriate persons as the Chair determines.

- 6.5 As soon as reasonably practicable following any decision taken by the Chair under paragraph 6.3 above, the Chair shall:

6.5.1 inform the Council of Governors that such a decision has been taken, and, to the extent appropriate the reasons for it; and

- 6.5.2 provide the Council of Governors with a copy of the terms of reference of any investigation, unless there is a good reason not to do so.
- 6.6 Where an investigation identifies, or, if no investigation is commissioned, the Chair following consultation with the persons specified in paragraph 6.4 above believes, a governor has failed to comply with this Constitution and/or any code of conduct applying to Governors, and/or the Standing Orders, the Council of Governors shall be asked to decide by a simple majority of those present and voting whether there is a case to be answered.
- 6.7 The governor concerned shall be notified in writing that there is a case to be answered and provided with a statement setting out that case (the "**statement of case**"). The governor concerned will be invited to respond within an appropriate and reasonable timescale as determined by the Council of Governors in the statement of case. The governor shall be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 6.8 Having considered the governor's response, the Council of Governors shall decide by a majority of those present and voting whether to uphold the statement of case.
- 6.9 If the statement of case is upheld:
  - 6.9.1 subject to paragraph 6.9.2 below, the Council of Governors may pass a resolution by a majority of those present and voting imposing such sanctions as it deems appropriate. This may include a written warning, non-payment of expense suspension from office; and/or
  - 6.9.2 the Chair or a governor may propose a resolution to remove the governor in question from office in accordance with paragraph 5 above.

## 7. Vacancies amongst governors

- 7.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 7.2 Where the vacancy arises amongst the appointed governors, the Company Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office or to commence a new term of office.
- 7.3 Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:
  - 7.3.1 to call an election within three months to fill the seat for the remainder of that term of office;
  - 7.3.2 to call an election to fill the seat for a new term of office;
  - 7.3.3 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office;

- 7.3.4 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for a new term of office; or
- 7.3.5 if the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held.
- 7.4 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or in the appointment or election of the governors attending the meeting.

## **8. Procedure for evaluation of the Council of Governors**

- 8.1 The performance of the Council of Governors shall be evaluated regularly, normally at intervals not exceeding 18 months, and where possible shall coincide with any similar evaluation of the Trust Board. However, the Council of Governors may decide at any time to evaluate a specific aspect of its performance. Such annual (or other) evaluations shall be internal to the Trust.
- 8.2 The Council of Governors shall participate to the extent appropriate in any external reviews of governance or leadership within the Trust.
- 8.3 The Chair shall be responsible for leading all reviews of the Council of Governors, supported and advised by the Company Secretary and the Lead Governor.
- 8.4 For each review the Chair, advised by the Company Secretary and the Lead Governor, shall develop and propose for approval by the Council of Governors the scope and methodology of the review. The review shall at a minimum:
  - 8.4.1 evaluate the performance of the Council of Governors against their general duties as set out in paragraph 16.1 of the constitution; and
  - 8.4.2 take into account any material issues raised about the performance of the Council of Governors since the previous review was completed.
- 8.5 Along with proposals for the scope of the evaluation the Chair shall prepare the process by which the views of Governors and others may be sought and considered. The Chair may also propose that the Council of Governors should establish a working group comprising Governors and others support him by discussing the issues raised and to develop proposals in response.
- 8.6 At the conclusion of the review the Chair shall present to the Council of Governors the findings, outcomes, and proposals for action. Subject to the Council of Governors approval of the actions, the Chair shall be responsible for ensuring that they are implemented in a timely manner and should report this to the Council of Governors.

**ANNEX 7**  
**Additional Provisions – Trust Board**

(Paragraphs 24.1.4, 25.3, 29.2)

**1. Appointment and removal of Chair and other non-executive directors**

- 1.1 The process for appointing new non-executive directors and the Chair will be as follows:
- 1.1.1 the Council of Governors will maintain a policy for the composition of the non-executive directors which takes account of the views of the Trust Board and the Trust's membership strategy, and which it shall review from time to time and in any event not less than once every three years;
  - 1.1.2 the Council of Governors will appoint a nominations and remuneration committee;
  - 1.1.3 the committee may work with an external organisation recognised as expert in relation to appointments to identify the skills and experience required for non-executive directors;
  - 1.1.4 where the nominations and remuneration committee considers that either the Chair or the non-executive director coming to the end of their term of office should be reappointed for a further term, the committee shall, following consultation with the Chair or in the case of the Chair's re-appointment the Deputy Chair, make a recommendation to the Council of Governors to that effect;
  - 1.1.5 subject to paragraph 1.1.4, appropriate candidates (not more than five for each vacancy) will be identified by the committee through a process of open competition, which will take account of the policy maintained from time to time by the Council of Governors and the skills and experience required (in which respect the Council of Governors will consult the Trust Board);
  - 1.1.6 the nominations and remuneration committee will comprise the Chair, the Deputy Chair, the Lead Governor, two governors from the public constituency and/or the patient and carer constituency, one staff governor and one other governor from any constituency. Each member of the committee shall have one vote;
  - 1.1.7 the committee will normally be chaired by the Chair of the Trust. Where the Chair has a conflict of interest, for example when the committee is considering the Chair's re-appointment or salary, the committee will be chaired by the Deputy Chair unless they are also standing for appointment, in which case another independent non-executive director;
  - 1.1.8 the nominations and remuneration committee will convene an interview panel, conduct interviews and recommend a candidate to the Council of Governors for approval; and

- 1.1.9 the Chair and other non-executive directors may not serve on the Trust Board for a period of more than 6 years from the date of their first appointment.
- 1.2 The removal of the Chair or another non-executive director shall be in accordance with the following procedures:
  - 1.2.1 any proposal for removal must be proposed by the Chair, or if the proposal is to remove the Chair, the Deputy Chair;
  - 1.2.2 written reasons for the proposal shall be provided to the non-executive director in question, who shall be given the opportunity to respond to such reasons;
  - 1.2.3 in making any decision to remove a non-executive director, the Council of Governors shall take into account at least the annual appraisal carried out by the Chair and advice from the Council of Governors nominations and remuneration committee and the Company Secretary;
  - 1.2.4 removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors; and
  - 1.2.5 if any proposal to remove a non-executive director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive director based upon the same reasons within 12 months of the meeting.

## **2. Further provisions as to the disqualification of directors**

- 2.1 In addition to paragraph 29 of the constitution, a person may not become or continue as a director of the Trust if:
  - 2.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sex Offenders Act or other relevant legislation or their name appears on the Protection of Children Act List;
  - 2.1.2 they are the spouse, partner, parent, child of, or occupant of the same household as, a member of the Trust Board or the Council of Governors of the Trust;
  - 2.1.3 they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 2.1.4 they are a governor of the Trust;
  - 2.1.5 they are a governor, non-executive director (including the Chair) or, executive director (including the chief executive officer) of another Health Service Body, unless:
    - 2.1.5.1 in the case of an executive director other than the Chief Executive, the Chair, following consultation with the Chief Executive;
    - 2.1.5.2 in the case of the Chief Executive, the Chair, following consultation with the Trust Board;

2.1.5.3 in the case of a non-executive director other than the Chair, the Chair following consultation with the Council of Governors; or

2.1.5.4 in the case of the Chair, the Senior Independent Director, following consultation with the Trust Board and the Council of Governors,

agrees to them becoming, or continuing as, a director of the Trust;

2.1.6 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

2.1.7 they have refused to sign and deliver to the Company Secretary a statement in the form required by the Trust Board confirming acceptance of the code of conduct for directors as is in force from time to time;

- 2.1.8 in the case of a non-executive director, they have refused without reasonable cause to fulfil any training requirement established by the Trust Board;
  - 2.1.9 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a director;
  - 2.1.10 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 2.1.11 they have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 2.1.12 they have failed to repay (without good cause) any amount of monies properly owed to the Trust; or
  - 2.1.13 they fail to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time.
- 2.2 Where a director becomes disqualified for appointment under paragraph 2 of this Annex or paragraph 29 of the constitution, they shall notify the Company Secretary or the Chair in writing of such disqualification.
  - 2.3 If it comes to the notice of the Company Secretary or the Chair that at the time of their appointment or later the director is so disqualified, they shall immediately declare that the director in question is disqualified and notify them in writing to that effect.
  - 2.4 A disqualified person's tenure of office shall automatically be terminated and they shall cease to act as a director.

### **3. Expenses**

- 3.1 The Trust may reimburse executive directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.

## ANNEX 8

### Standing Orders for the Practice and Procedure of the Council of Governors

#### 1. Interpretation and definitions

- 1.1 The definition and interpretation of words and expressions contained in these Standing Orders are as set out at paragraph 1 of the constitution.
- 1.2 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of these paragraphs and the Standing Orders (on which they should be advised by the Chief Executive or Company Secretary).

#### 2. General information

- 2.1 The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings, proceedings and associated deliberations. The Council of Governors shall at all times seek to comply with the NHS Foundation Trust Code of Governance (as the same is in issue from time to time).
- 2.2 The roles and responsibilities of the Council of Governors which are to be carried out in accordance with the constitution and the Trust's authorisation include:
  - 2.2.1 to hold the Trust Board to account for the performance of the Trust, including ensuring that the Trust Board acts so that the Trust does not breach its authorisation;
  - 2.2.2 to respond as appropriate when consulted by the Trust Board in accordance with the constitution;
  - 2.2.3 to undertake such functions as the Trust Board shall from time to time request;
  - 2.2.4 to prepare and from time to time review the Trust's membership strategy and the policy for the composition of the Council of Governors and of the non-executive directors; and
  - 2.2.5 when appropriate, to make recommendations for the revision of the constitution.
- 2.3 All business shall be conducted in the name of the Trust.

#### 3. Meetings of the Council of Governors

- 3.1 Council of Governors meetings
  - 3.1.1 Subject to paragraph 3.1.2 below, all meetings of the Council of Governors are to be open to members of the public.
  - 3.1.2 The Council of Governors may resolve by a majority of two thirds of governors present and voting, to exclude members of the public from any meeting or part of a meeting on the grounds that:
    - 3.1.2.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be

transacted following an appropriate resolution by the Council of Governors; or

3.1.2.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

3.1.3 The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with, or preventing the proper conduct of, the meeting.

3.1.4 The Council of Governors may invite the Chief Executive, and other appropriate directors, to attend any of its meetings to assist it in fulfilling its responsibilities.

### 3.2 Calling and Notice of Meetings

3.2.1 The Council of Governors is to meet a minimum of four times in each financial year.

3.2.2 Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least fourteen clear days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will be given by post or by email and also be published on the Trust's website and in the Trust's membership newsletter if practicable. Lack of service of the notice on any governor shall not affect the validity of a meeting.

3.2.3 Meetings of the Council of Governors may be called by the Company Secretary, the Chair, or by ten governors (including at least two elected governors and two appointed governors) who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting on at least fourteen clear days' (but not more than twenty eight days') notice. Notice by post, delivery in person, fax or email shall constitute written notice.

3.2.4 The Council of Governors may agree that its governors can participate in its meetings by means of electronic communication. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. The Council of Governors shall agree a protocol to be applied in the case of such meetings.

### 3.3 Setting the agenda

3.3.1 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under paragraph 3.4.1 below.

3.3.2 A governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least seven clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

- 3.3.3 Where a request for an item of business to be included on an agenda is made less than seven clear days but more than three clear days before a meeting such item of business may, at the discretion of the Chair, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.
- 3.4 Chair of the Meeting
- 3.4.1 At a Council of Governors meeting, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, shall preside.
- 3.4.2 If the Chair is absent from part of a meeting of the Council of Governors due to a conflict of interest, the Deputy Chair shall preside. If the Deputy Chair is absent, or unable to participate in that part of the meeting due to a conflict of interest, then the Lead Governor or, if the Lead Governor is absent or unable to participate in that part of the meeting due to a conflict of interest, the Deputy Lead Governor, shall preside for that part of the meeting.
- 3.5 Notices of motions
- 3.5.1 A governor desiring to move or amend a motion shall send a written notice thereof at least seven clear days before the meeting to the Chair, who shall insert it into the agenda for the meeting. This Standing Order 3.5.1 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 3.5.5 of these Standing Orders.
- 3.5.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.5.3 Notice of a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months, shall bear the signature of the governors who give it and also the signature of four other governors. When any such motion has been disposed of by the Council of Governors it shall not be for any governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.5.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.5.5 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 3.5.5.1 an amendment to the motion;
  - 3.5.5.2 the adjournment of the discussion or the meeting;
  - 3.5.5.3 the appointment of an ad hoc committee to deal with a specific item of business;
  - 3.5.5.4 that the meeting proceed to the next business;

- 3.5.5.5 that the motion be now put; or
- 3.5.5.6 a motion resolving to exclude the public, including the press.
- 3.5.6 Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under 3.5.5.4 or 3.5.5.5 to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate on the original motion.
- 3.6 Chair's ruling
  - 3.6.1 The decision of the Chair of the meeting (with advice of the Company Secretary) on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Trust's Standing Orders and Standing Financial Instructions, at the meeting, shall be final.
- 3.7 Quorum
  - 3.7.1 No business shall be transacted at a meeting of the Council of Governors unless:
    - 3.7.1.1 at least one third of the Council of Governors are present, a majority of whom must be public or patient and carer governors; and
    - 3.7.1.2 one of the Chair or Deputy Chair are present, unless either are absent for part of a meeting due to a conflict of interest, in which case, during that part of the meeting the Lead Governor or Deputy Lead Governor must be present.
  - 3.7.2 In the event that there is no quorum, in respect of any matters upon which decisions are to be made, the meeting may only make recommendations for consideration at the next quorate meeting of the Council of Governors (or by other means as defined in the constitution).
  - 3.7.3 If a governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of an interest (Standing Order 6.1.3) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
  - 3.7.4 The Chief Executive or any other member(s) of the Trust Board or a representative of the Trust's external auditors or other advisors may attend a meeting of the Council of Governors by invitation.

### 3.8 Voting

- 3.8.1 Unless otherwise specified in the constitution or these Standing Orders, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes of those governors present and voting.
- 3.8.2 All questions put to the vote shall, at the discretion of the Chair of the Council of Governors (or in their absence the person presiding in their place), be determined by a show of hands.
- 3.8.3 The Council of Governors may agree that its governors can vote electronically or by post. In no circumstances may an absent governor vote by proxy. "Absent" is defined as being absent at the time of the vote.
- 3.8.4 In case of an equality of votes the Chair of the Council of Governors (or in their absence the Deputy Chair) shall have a casting vote except when the Chair (or the Deputy Chair) has a conflict of interest. If the Chair (or the Deputy Chair) has a conflict of interest in the vote which prohibits them from voting under the constitution, the Lead Governor (or in their absence the Deputy Lead Governor) shall have a casting vote. For the avoidance of doubt the Chair shall not participate in votes at Council of Governors meetings, other than in the circumstances to which this paragraph 3.8.4 relates and in accordance with its terms.
- 3.8.5 A governor elected to the Council of Governors may not vote at a meeting of the Council of Governors unless, within the last three years made a declaration stating which constituency or section they are a member of and is not prevented from being a member of the Council of Governors.
- 3.8.6 Any matter which could be decided by the Council of Governors in a meeting may be determined by written resolution. A written resolution shall, with any accompanying papers which are relevant, describe the matter to be decided and provide for governors to sign the resolution to confirm their agreement. A written resolution may comprise identical documents sent to all governors, each to be signed by a governor, or one document to be signed by all governors voting. A written resolution shall be passed only when at least three quarters of the governors approve the resolution in writing within the timescale imposed in such a notice. The Company Secretary shall keep records of all written resolutions.

### 3.9 Suspension of council Standing Orders

- 3.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 3.9.2 A decision to suspend any Standing Order shall be recorded in the minutes of the relevant meeting.

- 3.9.3 A separate record of matters discussed during the suspension of any Standing Order(s) shall be made and shall be available to the directors and governors.
- 3.9.4 No formal business may be transacted by the Council of Governors while any Standing Order is suspended.
- 3.9.5 The Trust's audit committee shall review every decision to suspend any Standing Order.
- 3.10 Record of attendance
  - 3.10.1 The minutes of each meeting of the Council of Governors shall record the name of each governor in attendance as well as the name of their constituency or, in the case of appointed governors, the name of the appointing organisation. The names (and any other relevant details) of any other persons in attendance shall also be recorded in the minutes.
- 3.11 Minutes
  - 3.11.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting of the Council of Governors where they will be signed by the person presiding at it.
  - 3.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at such next meeting.
  - 3.11.3 Minutes shall be circulated in accordance with a decision of the governors. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Council of Governors Standing Order 3.1.2.

#### **4. Committees**

- 4.1 The nominations and remuneration committee will comprise the Chair, the Deputy Chair, two public governors and/or patient and carer governors, one staff governor and one appointed governor. When the Chair is being appointed or reappointed, the Deputy Chair shall take his or her place, unless they are standing for appointment, in which case another non-executive director shall take his or her place, and, when the Chair's remuneration is being considered, the Deputy Chair shall take their place.
- 4.2 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. Such committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.
- 4.3 The Council of Governors may appoint committees of the council consisting wholly of persons who are governors. Persons who are not governors may

attend such committees if appropriate under the committee's terms of reference but they shall have no vote.

- 4.4 A committee so appointed may appoint sub-committees consisting wholly of persons who are governors. Persons who are not governors may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.
- 4.5 These Council of Governors Standing Orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees or sub-committees so established by the Council of Governors.
- 4.6 Each such committee or sub-committee shall have such terms of reference and be subject to such conditions as the council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 4.7 The Council of Governors shall approve the membership of all committees and sub-committees that it has formally constituted and shall approve the recommendation from the relevant committee to appoint the Chair and, if applicable, the Deputy Chair of each committee and sub-committee.
- 4.8 Any member of a committee may participate in a duly convened meeting of a committee or sub-committee by means of a video conference, telephone or any other communications equipment which allows all persons to hear and speak to one another subject to reasonable notice and availability of the necessary equipment. Any such meetings shall adopt the procedure agreed by the Council of Governors.
- 4.9 The Council of Governors may, through the Company Secretary, request that external advisors assist them or any committee they appoint in carrying out duties. Advisers will:
  - 4.9.1 not be designated governors;
  - 4.9.2 not have voting rights; and
  - 4.9.3 provide such assistance as the Council of Governors may agree.

## **5. Confidentiality**

- 5.1 In the event of the Council of Governors, or any Committee established by the Council of Governors, meeting in private for all or part of a meeting, governors shall not disclose the contents of the papers considered, discussions held or minutes of the items taken in private.

## **6. Declaration of interests**

- 6.1 Declaration of interests
  - 6.1.1 Each governor shall declare:
    - 6.1.1.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.2 and 6.2.6 (subject to Standing Order 6.2.3);
    - 6.1.1.2 any actual or potential, direct or indirect, non-financial

professional interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.4 and 6.2.6; and

- 6.1.1.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.5 and 6.2.6.
  - 6.1.2 The responsibility for declaring an interest is solely that of the governor concerned and shall be declared to the Company Secretary:
    - 6.1.2.1 within 28 days of commencement of that governor's term of office; or
    - 6.1.2.2 if arising later, within 5 days of the governor becoming aware of the interest.
  - 6.1.3 If during the course of a Council of Governors meeting a governor has an interest of any sort in a matter which is the subject of consideration the governor concerned shall disclose the fact, and the Chair shall decide what action to take. This may include excluding the governor from the discussion of the matter in which the governor has an interest and/or prohibiting the governor from voting any such matter.
  - 6.1.4 Subject to Standing Order 6.2.3, if a governor has declared a financial interest in a matter (as described in Standing Order 6.2.2) they shall not take part in the discussion of that matter nor vote on any question with respect to that matter.
  - 6.1.5 Any interest declared at a meeting of the Council of Governors and subsequent action taken should be recorded in the Council of Governors' meeting minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 6.2 Nature of interests
- 6.2.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.
  - 6.2.2 A financial interest is where a governor may receive direct financial benefits (by either making a gain or avoiding a loss) as a consequence of a decision that the Council of Governors makes. This could include:
    - 6.2.2.1 directorships, including non-executive directorships held in any other organisation which is doing, or is likely to be doing business with the Trust;

- 6.2.2.2 employment in an organisation other than the Trust; or
- 6.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with the Trust.
- 6.2.3 A governor shall not be treated as having a financial interest in any a matter by reason only:
  - 6.2.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
  - 6.2.3.2 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts;
  - 6.2.3.3 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
  - 6.2.3.4 of any travelling or other expenses or allowances payable to a governor in accordance with the constitution.
- 6.2.4 A non-financial professional interest is where a governor may receive a non-financial professional benefit as a consequence of a decision that the Council of Governors makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a governor is:
  - 6.2.4.1 an advocate for a particular group of patients;
  - 6.2.4.2 a clinician with a special interest;
  - 6.2.4.3 an active member of a particular specialist body; or
  - 6.2.4.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 6.2.5 A non-financial personal interest is where a governor may benefit personally as a consequence of a decision that the Council of Governors makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where a governor is:
  - 6.2.5.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
  - 6.2.5.2 a member of a lobbying or pressure group with an interest in health and/or social care.
- 6.2.6 A governor will be treated as having an indirect financial interest, indirect non-financial professional interest or indirect non-financial

personal interest where they have a close association with another individual who has a financial interest, non-financial professional interest or a non-financial personal interest in a decision that the governor is involved in making. This includes material interests of:

6.2.6.1 close family members and relatives, including a spouse or partner or any parent, child, brother or sister of a governor;

6.2.6.2 close friends and associates; and

6.2.6.3 business partners.

6.2.7 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.

### 6.3 Register of interests

6.3.1 The Company Secretary will ensure that a register of interests is established to record formally declarations of interests of governors.

6.3.2 Details of the register will be kept up to date and reviewed annually by the Council of Governors.

6.3.3 The register will be available to the public.

## 7. Compliance

7.1 All members of the Council of Governors are required to comply with Standing Financial Instructions approved by the Trust Board from time to time for the guidance of all staff employed by the Trust.

7.2 All members of the Council of Governors should act at all times in accordance with the Trust's schedule of reservation and delegation of powers as the same may be adopted by the Trust from time to time.

7.3 All members of the Council of Governors are required to comply with any Code of Conduct adopted by the Council of Governors.

## 8. Resolution of disputes with the Trust Board

8.1 Should a dispute arise between the Council of Governors and the Trust Board this disputes resolution procedure shall apply.

8.2 The Chair, or Deputy Chair if the dispute involves the Chair, shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.

8.3 Failing resolution under Standing Order 8.2 above, the Trust Board or the council, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.

8.4 The Chair or Deputy Chair (if the dispute involves the Chair) shall ensure that the disputes statement, without amendment or abbreviation in any way, shall

be submitted to the next formal meeting of the Trust Board or the Council of Governors as appropriate. That meeting shall agree the precise wording of a response to disputes statement.

- 8.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved then the procedure outlined in Standing Order 8.2 above shall be repeated.
- 8.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair), and following the further discussions prescribed in council Standing Order 8.5, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair (as the case may be), there is no prospect of a resolution (partial or otherwise) then they shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the council and the Trust Board with a view to resolving the dispute.
- 8.7 On the satisfactory completion of this disputes procedure the Trust Board shall implement agreed changes.
- 8.8 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the decision of the Trust Board shall prevail.
- 8.9 In the event that the Council of Governors is of the opinion that the Trust has breached, or is about to breach, the terms of its authorisation, nothing in this procedure shall prevent the Council of Governors from informing Monitor to that effect.

## **9. Variation and amendment of these Standing Orders**

- 9.1 These Standing Orders shall be amended only if:
  - 9.1.1 a notice of motion has been given pursuant to Standing Order 4.5 of this Annex 8;
  - 9.1.2 more than half the total of the governors voting approve the amendment;
  - 9.1.3 more than half of the members of the Trust Board voting approve the amendment; and
  - 9.1.4 members' approval is obtained for any amendment to the role or duties of the Council of Governors.

## ANNEX 9

### Standing Orders for the Practice and Procedure of the Trust Board

#### 1. Interpretation and definitions

- 1.1 The definition and interpretation of words and expressions contained in these Standing Orders are as set out at paragraph 1 of the constitution.
- 1.2 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of these paragraphs and the Standing Orders (on which they should be advised by the Chief Executive or Company Secretary).

#### 2. Meetings of the Trust Board

- 2.1 Subject to paragraph 2.2 below, all meetings of the Trust Board are to be open to members of the public.
- 2.2 The Trust Board may resolve to exclude members of the public or staff from any meeting or part of meeting on the grounds that:
  - 2.2.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted following an appropriate resolution by the Trust Board; or
  - 2.2.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 2.3 The Chair may exclude any member of the public or staff from a meeting of the Trust Board if that person is interfering with or preventing the proper conduct of the meeting.
- 2.4 Nothing in the Standing Orders shall require the Trust Board to allow members of the public, staff or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Trust Board.
- 2.5 The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Trust Board's meetings and may change, alter or vary these terms and conditions as it sees fit.

#### 3. Calling and Notice of Meetings

- 3.1 Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least fourteen clear days' written notice of the date and place of every meeting of the Trust Board to all directors. Notice will be given by post or by email and also be published on the Trust's website.
- 3.2 Meetings of the Trust Board may be called by the Company Secretary, the Chair, or by four directors who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all directors as soon as possible after receipt of such a request and shall call a meeting on at least fourteen clear days' but not more than twenty eight days' notice.

- 3.3 Lack of service of such a notice on any director shall not affect the validity of a meeting.

#### **4. Agenda and supporting papers**

- 4.1 A director desiring other matters to be included on an agenda shall make his or her request known to the Chair, in writing at least seven (7) clear days before the meeting. The director should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than seven clear days but more than three clear days before a meeting such item of business may, at the discretion of the Chair, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

#### **5. Petitions**

- 5.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next meeting.

#### **6. Chair of the Meeting**

- 6.1 At a meeting of the Trust Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair shall preside.
- 6.2 If the Chair is absent from part of a meeting of the Trust Board due to a conflict of interest the Deputy Chair shall preside. If the Deputy Chair is absent, or unable to participate in that part of the meeting due to a conflict of interest, then the remaining non-executive directors present shall choose which non-executive director present shall preside for that part of the meeting.

#### **7. Notices of motion**

- 7.1 A director desiring to move or amend a motion shall send a written notice thereof at least seven clear days before the meeting to the Chair. The Chair shall insert in the agenda for the meeting all notices so received. This Standing Order 7.1 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda.

#### **8. Withdrawal of motion or amendments**

- 8.1 A motion or amendment once moved and seconded may be withdrawn by the proposer, with the concurrence of the seconder and the consent of the Chair.

#### **9. Motion to rescind a resolution**

- 9.1 Notice of a motion to amend or rescind any resolution, or the general substance of any resolution passed within the preceding 6 calendar months, shall bear the signature of the director who gives it and also the signature of 4 other directors. When any such motion has been disposed of by the Trust Board, it shall not be for any directors' other than the Chair to propose a motion to the same effect within 6 months. The Chair may do so, however, if they consider it appropriate.

#### **10. Motions**

- 10.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

- 10.2 When a motion is under discussion, or immediately prior to discussion, it shall be open to a director to move:
- 10.2.1 an amendment to the motion;
  - 10.2.2 the adjournment of the discussion or the meeting;
  - 10.2.3 the appointment of an ad hoc committee to deal with a specific item of business;
  - 10.2.4 that the meeting proceed to the next business;
  - 10.2.5 that the motion be now put; or
  - 10.2.6 a motion resolving to exclude the public, including the press.
- 10.3 Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under Standing Order 10.2.4 and Standing Order 10.2.5, to ensure objectivity motions may only be put by a director who has not previously taken part in the debate on the original motion.

## **11. Chair's ruling**

- 11.1 The decision of the Chair of the meeting (with advice from the Company Secretary) on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final and observed at the meeting.

## **12. Voting**

- 12.1 Questions arising at a meeting of the Trust Board shall be decided by a majority of votes.
- 12.2 In the case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
- 12.3 No resolution of the Trust Board shall be passed if it is opposed by all of the independent non-executive directors present or by all of the executive directors present.
- 12.4 At the discretion of the Chair, all questions put to the vote shall be determined by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 12.5 If a director so requests, his vote shall be recorded by name.
- 12.6 Subject to Standing Order 12.7 below, in no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 12.7 An officer, who has been appointed formally by the Trust Board to act up for an executive director of the Trust Board during his or her absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director.

- 12.8 An officer attending the Trust Board to represent an executive director without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

### **13. Minutes**

- 13.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where the person presiding at it shall sign them. The signed minutes will be conclusive evidence of the events of that meeting.
- 13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 13.3 Minutes shall be circulated in accordance with directors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Trust Board Standing Order 2.2.

### **14. Record of Attendance**

- 14.1 The names and job titles of the Chair and the other directors present at the meeting shall be recorded in the minutes.

### **15. Quorum**

- 15.1 No business shall be transacted at a meeting unless at least five directors are present including:
- 15.1.1 at least two non-executive directors, one of whom must be the Chair or the Deputy Chair, unless either of them are absent for part of a meeting due to a conflict of interest; and
  - 15.1.2 not less than two executive directors, one of whom must be the Chief Executive or another executive director nominated by the Chief Executive.
- 15.2 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.
- 15.3 If the Chair or director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order 23), that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 15.4 The Trust Board may agree that its members can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. However, subject to Standing Order 12.7 above, in no circumstances shall this paragraph be construed as allowing an absent director to vote by proxy.

## **16. Joint directors**

- 16.1 Where more than one person is appointed jointly as a member of the Trust Board, those persons shall count as one person.
- 16.2 Where the office of a member of the Trust Board is shared jointly by more than one person:
  - 16.2.1 either or both those persons may attend or take part in meetings of the Trust Board;
  - 16.2.2 if both are present at a meeting they should cast one vote if they agree;
  - 16.2.3 in the case of disagreements no vote should be cast; and
  - 16.2.4 The presence of either or both those persons should count as the presence of one person for the purpose of Trust Board Standing Order 15.

## **17. Urgent decisions**

- 17.1 Where a matter requiring decision arises for which, under normal circumstances, the approval of the Trust Board would be appropriate but which could not be obtained in the timescale within which action is required, either the Chair or the Chief Executive is authorised to act (the latter with the prior consent of the Chair or, in the absence of the Chair, the Deputy Chair). When action is taken under this authority, the Chair or Chief Executive shall seek endorsement of the Trust Board at its next formal meeting.

## **18. Delegation to committees**

- 18.1 Any of these powers may be delegated to a committee of directors or to an executive director.
- 18.2 The Trust Board shall establish committees, including an audit committee, a Board of Director's nominations committee (appointment of executive directors and recommending appointment of non-executive directors to the next general meeting of the Council of Governors) and a Trust Board remuneration committee.
- 18.3 Each such committee, and any sub-committee, shall have such terms of reference and powers as the Trust Board shall determine from time to time. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 18.4 Where committees are authorised to establish sub-committees, they may not delegate executive powers to the sub-committee unless expressly authorised by the Trust Board.
- 18.5 The Trust Board shall have the power to approve appointments and dismiss the members of any committee or subcommittee that is established under the power afforded to the Board under Standing Order 18, as applicable.

## **19. Committees established by the Trust Board**

- 19.1 The committees to be established by the Trust Board shall include the following:

#### 19.1.1 Audit Committee

An audit committee will be established and constituted to provide the Trust Board with an independent and objective review on its financial systems, financial information and compliance with relevant laws and guidance. Its Terms of Reference will be approved by the Trust Board and reviewed on a periodic basis.

The NHS Foundation Trust Code of Governance recommends a minimum of three independent non-executive directors be appointed, of which one must have significant, recent and relevant financial experience.

The duties and decisions to be taken by the committee are contained in the relevant part of the schedule of reservation and delegation of powers.

#### 19.1.2 Trust Board Remuneration Committee

A Trust Board remuneration committee will be established and constituted. The duties and decisions to be taken by the committee are contained in the relevant part of the schedule of reservation and delegation of powers.

The NHS Foundation Trust Code of Governance recommends the committee be comprised exclusively of non-executive directors, and should include at least three independent non-executive directors.

#### 19.1.3 Trust Board' Nominations Committee

A Trust Board' nominations committee will be established and constituted. The duties of and decisions to be taken by the committee are contained in the relevant part of the schedule of reservation and delegation of powers.

The committee, with external advice as appropriate, is responsible for the identification and nomination of executive directors.

### **20. Delegation to officers**

20.1 Those functions of the Trust which have not been retained as reserved by the Trust Board or delegated to a committee or sub-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Trust Board.

20.2 The Chief Executive shall prepare a scheme of delegation identifying his or her proposals, which shall be considered and approved by the Trust Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the Trust Board, as it see fit.

20.3 Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Trust Board of the director responsible for finance to provide information and advise the Trust Board in accordance with statutory or regulatory requirements. Outside these statutory or regulatory

requirements, the role of the director responsible for finance shall be accountable to the Chief Executive for operational matters.

## **21. Confidentiality**

- 21.1 A member of a committee shall not disclose a matter dealt with by or brought before the committee without its permission until the committee has reported back to the Trust Board or shall otherwise have concluded the matter.
- 21.2 A director of the Trust or a member of a committee shall not disclose any matter reported to the Trust Board or otherwise dealt with by the committee notwithstanding that the matter has been reported or action has been concluded if the Trust Board or committee shall resolve that it is confidential.

## **22. Additional Provisions**

- 22.1 The Trust Board may establish additional protocols and procedures for the operation of the Trust Board, and the economic, effective and efficient operation and good governance of the Trust generally from time to time as appropriate.

## **23. Declaration of interests**

- 23.1 Declaration of interests
- 23.1.1 Each director shall comply with paragraph 32 of the constitution regarding conflicts of interest.
- 23.1.2 Interests that a required to be declared by a director in accordance with paragraph 32.5 of the constitution are:
- 23.1.2.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 23.2.2 and 23.2.6 (subject to Standing Order 23.2.3); and
- 23.1.2.2 any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 23.2.4 and 23.2.6; and
- 23.1.2.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 23.2.5 and 23.2.6.
- 23.1.3 An interest must be declared under paragraph 32.5 of the constitution to the Company Secretary:
- 23.1.3.1 within five days of the director's appointment; or
- 23.1.3.2 if arising later, as soon as reasonably practicable following that director becoming aware of the interest.

- 23.1.4 If during the course of a meeting the Trust Board, a director has an interest of any sort in a matter which is the subject of consideration the director concerned shall disclose the fact, and the Chair shall decide what action to take. This may include excluding the director from the discussion of the matter in which the director has an interest and/or prohibiting the governor from voting any such matter.
- 23.1.5 Subject to Standing Order 23.2.6, if a director has declared a financial interest in a matter (as described in Standing Order 23.2.2) they shall not take part in the discussion of that matter nor vote on any question with respect to that matter.
- 23.1.6 Any interest declared at a meeting of the Trust Board and subsequent action taken should be recorded in the meeting minutes of the meeting. Any changes in interests should be declared at the next Trust Board meeting following the change occurring.
- 23.1.7 This Standing Order 23.1 applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust Board and applies to a member of any such committee or sub-committee (whether or not they are also a member of the Trust) as it applies to a member of the Trust.

## 23.2 Nature of interests

- 23.2.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.
- 23.2.2 A financial interest is where a director may receive direct financial benefits (by either making a gain or avoiding a loss) as a consequence of a decision that the Trust Board makes. This could include:
  - 23.2.2.1 directorships, including non-executive directorships held in any other organisation which is doing, or is likely to be doing business with the Trust;
  - 23.2.2.2 employment in an organisation other than the Trust; or
  - 23.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with the Trust.
- 23.2.3 A director shall not be treated as having a financial interest in any a matter by reason only:
  - 23.2.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
  - 23.2.3.2 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts;
  - 23.2.3.3 of an interest in any company, body or person with

which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

23.2.3.4 of any remuneration or allowances payable to a director in accordance with the constitution.

23.2.4 A non-financial professional interest is where a director may receive a non-financial professional benefit as a consequence of a decision that the Trust Board makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a director is:

23.2.4.1 an advocate for a particular group of patients;

23.2.4.2 a clinician with a special interest;

23.2.4.3 an active member of a particular specialist body; or

23.2.4.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.

23.2.5 A non-financial personal interest is where a director may benefit personally as a consequence of a decision that the Trust Board makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where a governor is:

23.2.5.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or

23.2.5.2 a member of a lobbying or pressure group with an interest in health and/or social care.

23.2.6 A director will be treated as having an indirect financial interest, indirect non-financial professional interest or indirect non-financial personal interest where they have a close association with another individual who has a financial interest, non-financial professional interest or a non-financial personal interest in a decision that the director is involved in making. This includes material interests of:

23.2.6.1 close family members and relatives, including a spouse or partner or any parent, child, brother or sister of the director;

23.2.6.2 close friends and associates; and

23.2.6.3 business partners.

23.2.7 If directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.

### 23.3 Register of interests

- 23.3.1 The Company Secretary will ensure that a register of interests is established to record formally declarations of interests of directors.
- 23.3.2 Details of the register will be kept up to date and reviewed annually by the Trust Board.
- 23.3.3 The register will be available to the public.

## **24. Canvassing of and Recommendations by Members in Relation to Appointments**

- 24.1 Canvassing of members of the Trust or of any committee of the Trust directly or indirectly for any appointment with the Trust shall disqualify the candidate for such appointment. The contents of this paragraph shall be included in application forms or otherwise brought to the attention of candidates.
- 24.2 A member of the Trust Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 24.3 Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

## **25. Relatives of Members of the Board or Officers of the Trust**

- 25.1 The Chair and every member and officer of the Trust shall disclose to the Trust Board any relationship between themselves and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Trust Board any such disclosure made.
- 25.2 On appointment, members (and, prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other member or holder of any office of the Trust.
- 25.3 Where the relationship to a member of the Trust is disclosed, the provisions of Standing Orders 31 and 32 may apply.

## **26. Standards of business conduct**

- 26.1 Directors of the Trust shall comply with standing financial instructions prepared by the director of finance and approved by the Trust Board for the guidance of all staff employed by the Trust.
- 26.2 Directors of the Trust must behave in accordance with the NHS Foundation Trust Code of Governance or its equivalent(s) from time to time.
- 26.3 Each director will uphold the seven principles of public life as detailed by the Nolan Committee.

## **27. Gifts and Hospitality**

- 27.1 Directors must comply with the Trust's policy on gifts and hospitality as is in place from time to time.

## **28. Custody of Seal**

28.1 The common seal of the Trust shall be the responsibility of the Company Secretary and kept in a secure place.

## **29. Sealing of Documents**

29.1 Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two executive directors duly authorised by the Chief Executive, and shall be attested by them.

29.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the director of finance, or an officer nominated by the director of finance and authorised and countersigned by the chief executive, or an officer nominated by the Chief Executive who shall not be within the originating directorate.

29.3 All deeds entered into by the Trust and all documents conveying an interest in land must be executed by the application of the Trust's seal.

## **30. Register of Sealing**

30.1 An entry of every sealing shall be made and numbered consecutively in a record provided for that purpose, and shall be signed by the persons who shall have approved and authorized the document and those who attested the seal. A report of all sealing shall be made to the Trust Board at the next meeting of the Trust Board.

## **31. Signature of documents**

31.1 Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any nominated executive director or the Trust Board shall have delegated the necessary authority to some other person for the purpose of such proceedings.

31.2 In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the scheme of delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

31.3 The Chief Executive or nominated officers shall be authorized, by resolution of the Trust Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a Deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority

## **32. Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers**

32.1 The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect (as adopted from time to time) as if incorporated in these Standing Orders.

### **33. Suspension of Standing Orders**

- 33.1 Except where this would contravene any statutory provision or any direction made by the regulator or any term or condition set out in the Trust's constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (including at least one executive director and one non-executive director) and that a majority of those members present vote in favour of the suspension.
- 33.2 The reason for the suspension shall be recorded in the Board minutes.
- 33.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Trust.
- 33.4 No formal business may be transacted while Standing Orders are suspended.
- 33.5 The Audit Committee shall review every decision to suspend Standing Orders.

### **34. Variation and amendment of these Standing Orders**

- 34.1 These Standing Orders shall be amended only if:
  - 34.1.1 a notice of motion has been given pursuant to Standing Order 7 of this Annex; and
  - 34.1.2 more than half the total of governors voting approve the amendment;
  - 34.1.3 more than half of the members of the Trust Board voting approve the amendment (including no fewer than half the total of the Trust's independent non-executive directors);
  - 34.1.4 members' approval is obtained (if required by statute); and
  - 34.1.5 the variation proposed does not contravene a statutory provision, a direction made by the regulator, or any term or condition set out in the constitution

### **35. Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

- 35.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Trust Board for action or ratification. All members of the Trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Company Secretary as soon as possible.

### **36. Review of Standing Orders**

- 36.1 These Standing Orders shall be reviewed periodically by the Trust Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

## ANNEX 10

### Further Provisions – Members

#### 1. Restriction on membership

- 1.1 In addition to paragraph 10 of the constitution, the following restrictions on membership apply:
- 1.1.1 The following will not be eligible to become or continue a member of the Trust:
    - 1.1.1.1 a person who is subject to a sex offenders order or appears on the Protection of Children Act List (POCAL);
    - 1.1.1.2 an individual who exhibits inappropriate conduct (as agreed by a majority of the governors present and voting at a meeting of the Council of Governors), including those who have been identified as the perpetrators of a serious incident involving violence, assault or harassment against Trust staff;
    - 1.1.1.3 a person who is deemed a vexatious or persistent complainant or litigant against the Trust without reasonable cause, as determined by the Trust Board for initial members, and thereafter by the Council of Governors.
  - 1.1.2 The Trust is not entitled to co-opt Members or appoint 'associates' or other types of Members other than as set out in this Constitution.

#### 2. Termination of Membership

- 2.1 A member shall cease to be a member if:
- 2.1.1 they resign by notice in writing to the Company Secretary or Chair;
  - 2.1.2 they cease to be eligible to continue to as a member under paragraph 1.1.1 of this Annex;
  - 2.1.3 they are expelled from membership under paragraph 3 of this Annex;
  - 2.1.4 they cease to be entitled under this constitution to be a member of the public constituency, patient and carer constituency or of any of the classes of the staff constituency;
  - 2.1.5 if it appears to the Company Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Trust; or
  - 2.1.6 they die.

### **3. Removal from the Membership Register**

- 3.1 A member may be expelled by a resolution approved by not less than two thirds of the governors present and voting at a general meeting of the Council of Governors. The following procedure is to be adopted.
- 3.1.1 any member may complain to the Company Secretary that another member has acted in a way detrimental to the interests of the Trusts;
- 3.1.2 if a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
- 3.1.2.1 dismiss the complaint and take no further action;
- 3.1.2.2 for a period not exceeding twelve months, suspend the rights of the member complained of to attend members' meetings and vote under this constitution; or
- 3.1.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 3.1.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.1.4 At the meeting, the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.1.5 If the member complained of fails to attend the meeting without due cause, the meeting may proceed in his absence.
- 3.2 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel such member is carried.
- 3.3 No person who has been expelled from membership is to be re-admitted except by a resolution passed by a majority vote of two-thirds of the Council of Governors present and voting at a general meeting.

### **4. Membership disputes**

- 4.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Company Secretary who shall make a determination on the point in issue. If the member is not satisfied with the Company Secretary's decision they may appeal in writing within 14 days of the Company Secretary's decision to the Chair whose decision shall be final.

### **5. Members' meetings**

- 5.1 All members meetings other than Annual Members' Meetings are called special members' meetings.

- 5.2 Members meetings are open to all members of the Trust, governors and directors, and representatives of the auditor, and to members of the public unless the Council of Governors decides otherwise
- 5.3 The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a members' meeting.
- 5.4 All members' meetings are to be convened by the Company Secretary by order of the Council of Governors.
- 5.5 The Council of Governors may:
  - 5.5.1 arrange for a members' meeting to be held in different venues each year;
  - 5.5.2 make provisions for a members' meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 5.6 At the members' meeting:
  - 5.6.1 the Trust Board shall present to the members:
    - 5.6.1.1 the annual accounts;
    - 5.6.1.2 any report of the auditor; and
    - 5.6.1.3 forward planning information for the next financial year;
  - 5.6.2 the Council of Governors shall present a report on:
    - 5.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the public constituency and of the classes of the staff constituency is representative of those eligible for such membership;
    - 5.6.2.2 the progress of the membership strategy; and
    - 5.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors; and
  - 5.6.3 the results of the election and appointment of governors and the appointment of non-executive directors will be announced.
- 5.7 Notice of a members' meeting is to be given:
  - 5.7.1 by notice to all members;
  - 5.7.2 by notice prominently displayed at the head office and at all of the Trust's places of business; and
  - 5.7.3 by notice on the Trust's website

at least 14 clear days before the date of the meeting. The notice must:

- 5.7.4 be given to the Council of Governors and the Trust Board, and to the auditor;
  - 5.7.5 state whether the meeting is an Annual Members Meeting or a special members' meeting;
  - 5.7.6 give the time, date and place of the meeting; and
  - 5.7.7 indicate the business to be dealt with at the meeting.
- 5.8 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 5.9 It is the responsibility of the Council of Governors, the Chair of the meeting and the Company Secretary to ensure that at any members' meeting:
- 5.9.1 the issues to be decided are clearly explained;
  - 5.9.2 sufficient information is provided to members to enable rational discussion to take place.
- 5.10 No business may be conducted at a members' meeting unless a quorum is present. The quorum for members' meetings is the Chair (or Deputy Chair) and at least one member from each of the public constituency, patient and carer constituency and staff constituency.
- 5.11 At a members' meeting the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair shall preside. If the Chair and Deputy Chair are absent then another non-executive director shall preside. If no non-executive directors are available the Lead Governor shall preside for that part of the meeting.
- 5.12 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are disqualified from participating, then another non-executive director shall preside. If all the non-executive directors are disqualified the Lead Governor shall preside for that part of the meeting.
- 5.13 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors may determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 5.14 A resolution put to the vote at a members' meeting shall be decided upon by a poll.
- 5.15 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second and casting vote.
- 5.16 The result of any vote will be declared by the Chair and entered in the minutes. The minutes will be conclusive evidence of the result of the vote.